

Plaintiff Thomas E. Perez, Secretary of Labor, U.S. Department of Labor, brings this action pursuant to section 107 of the Family and Medical Leave Act of 1993, 29 U.S.C. §2601, et seq., (“FMLA”) seeking an award of wages, salary, employment benefits, or other compensation, plus interest and an additional equal amount as liquidated damages; and to enjoin and restrain Defendant, DNA Diagnostics Center, Inc. from violating the provisions of section 105 of the Act, including the restraint of any withholding of payment of wages, salary, employment benefits, or other compensations, plus interest; and to award such other equitable relief including employment, reinstatement and promotion, as found by the Court to be due and appropriate under the Act.

Jurisdiction of this action is conferred upon the Court by sections 107(b) and 107(d) of the Act and by 28 U.S.C. §§1331, 1345.

II.

Defendant is and at all times hereinafter mentioned was a corporation with a place of business at DNA Technology Park, One DDC Way, Fairfield, OH 45014, within the jurisdiction of this Court and this division, and, at all times hereinafter mentioned, was engaged at that location in performing its principal business of providing DNA testing services and related activities.

III.

Defendant is and at all times hereinafter mentioned was engaged in commerce or in an industry or activity affecting commerce and employed 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year and is an employer within the meaning of section 101(4) of the Act.

IV.

At all times hereinafter mentioned Defendant employed Danielle Perdue at its Fairfield, Ohio facility, at which Defendant employed 50 or more employees.

V.

From at least April 16, 2013 onward, Ms. Perdue had day-to-day responsibilities to care for and financially support her niece, a minor, and therefore, stood *in loco parentis* to her niece for purposes of the Act.

VI.

On or about April 8, 2013, and thereafter, Ms. Perdue requested leave for the purpose of caring for her niece's asthma and obstructive sleep apnea, which are serious health conditions within the meaning of the Act. At the time of said requests, Ms. Perdue had been employed by Defendant for at least 12 months and had performed at least 1250 hours of service with

Defendant during the previous 12-month period either designated by Defendant or which Defendant was required to designate, and thus was entitled to leave as provided for under section 102(a) of the Act.

VII.

On or about April 18, 2013, Ms. Perdue attempted to furnish Defendant with a completed copy of Form WH-380F, *Certification of Health Care Provider for Family Member's Serious Health Condition*, and a copy of a guardianship agreement, appointing her the legal guardian of her niece. Defendant's Human Resources Manager, Pam Herd, reviewed the documents, returned them to Ms. Perdue, and told Ms. Perdue, contrary to the FMLA, that she could not take leave to care for her niece, because she did not have legal guardianship of her niece "through the courts."

VIII.

On or about April 29, 2013, during the pendency of her leave for the purpose of caring for her niece's serious health conditions, Defendant terminated Ms. Perdue. A termination letter sent by Defendant to Ms. Perdue on or about April 29, 2013, stated, in pertinent part: "you have been absent from work since April 17, 2013. Because your absence has not been approved and we have not heard from you since April 18, 2013, we have determined that you abandoned your position."

IX.

Defendant, an employer subject to the provisions of the Act, violated the provisions of section 105 of the Act in that it has interfered with, restrained, or denied Ms. Perdue the exercise of rights provided under the Act and discharged or otherwise discriminated against Ms. Perdue for asserting rights under the Act.

X.

During the period since April 29, 2013, Defendant has violated and is violating the aforesaid provisions of the Act. A judgment which enjoins and restrains such violations is expressly authorized by section 107(d) of the Act.

WHEREFORE, cause having been shown, Plaintiff prays for Judgment against Defendant as follows:

1. For an order:
 - (a) Pursuant to section 107(d) of the Act, finding Defendant liable for unpaid back wages, salary, employment benefits or other compensation found due plus interest calculated at the prevailing rate and liquidated damages equal in amount to the unpaid compensation and interest found due; or
 - (b) pursuant to section 107(d) of the Act, enjoining and restraining Defendant, its officers, agents, servants, employees, and those persons in active concert or participation with Defendant, from withholding payment of unpaid back wages, salary, employment benefits or other compensation found due plus interest; and
- 2 For an order pursuant to section 107(d) of the Act, awarding employment, reinstatement and/or promotion; and
3. For an order pursuant to section 107(d) of the Act permanently enjoining and restraining Defendant, its officers, agents, servants, employees, and those persons in active concert or participation with Defendant, from prospectively violating the Act; and
4. For an order granting such further relief as may be appropriate

Dated: November 27, 2013

/s/ Matthew M. Scheff
MATTHEW M. SCHEFF (0082229)
Trial Attorney

United States Department of Labor,
Office of Solicitor
1240 East Ninth St., Room 881
Cleveland, OH 44199
(216) 522-3878
(216) 522-7172 (Fax)
scheff.matthew@dol.gov

OF COUNSEL:

M. PATRICIA SMITH
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

BENJAMIN T. CHINNI
Associate Regional Solicitor

SANDRA B. KRAMER
Senior Trial Attorney